



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Blake Construction Co., Inc.

File: B-229951

Date: April 12, 1988

DIGEST

1. Where a bid contained a total price for an additive item on a construction contract but no unit price for that work as required in a solicitation amendment, the bid is responsive, because the contracting agency did not select the additive item for award and, therefore, the failure to bid a unit price on the item would not make the bid unacceptable.

2. Protest that the awardee did not include plant bed preparation in its bid for a construction contract as required by a solicitation amendment is denied where the awardee acknowledged receipt of the amendment, did not take any exception to the solicitation's requirements, and, therefore, was bound to perform plant bed preparation upon acceptance of the bid by the contracting agency.

DECISION

Blake Construction Co., Inc., protests award of a contract for construction of a building to Charles H. Tompkins Co. by the General Services Administration (GSA) pursuant to invitation for bids (IFB) No. GS-11P87MKC7502. Blake alleges that the award was improper because Tompkins' bid was nonresponsive to the IFB. We deny the protest.

The invitation was issued on September 8, 1987, and required a lump-sum bid price for the base work (essentially, excavation and construction of an office building), as well as prices for three additive bid items, also termed bid alternates. The IFB stated that the low bid for award purposes would be determined by totaling the base bid price and the additive items' prices "in the order of priority listed in the solicitation that provides the most features

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of work within the funds available at bid opening." The IFB originally stated the additive items and their order of priority as follows:

"Order of Priority of Bid Items: The order of priority in which the additive bid items (Bid Alternates) will be considered in aggregate with the BASE BID to determine the low bidder within funds available shall be as follows:

"A. Add alternate No. 1 - Provide caissons in lieu of spread footings at column locations (Unit prices shall be provided).

"B. Add alternate No. 2 - Provide marble finish at 2nd floor lobby in lieu of gypsum board; Provide venetian blinds; Provide carpet and related vinyl base.

"C. Add alternate No. 3 - provide landscaping (plants only)."

The invitation included Standard Form (SF) 1442, a bid form that contained spaces for the base price, each alternate price, and a total bid price.

Of the four amendments issued by GSA, only amendment No. 4 is relevant to the protest. Among other things, amendment No. 4 extended the bid opening to October 15, and substituted a new SF 1442 for the original bid form. The new bid form contained a blank space for a bidder to insert the unit price (per linear foot) for caissons,^{1/} in addition to the lump-sum price for providing caissons in alternate No. 1. The original bid form contained only a blank space for the lump-sum price for caissons, although the specifications asked for a unit price as well. The stated purpose for the unit price was for contract price adjustment depending on the depth of the caissons; the invitation, both as issued and as amended, specifically provided that the unit price would not be relevant to bid evaluation. The amendment also changed the description of alternate No. 3 to: "Provide site landscaping (plants and their installation only; plant bed preparation is included in the base bid)."

^{1/} A foundation caisson is a shaft of concrete placed under a building column or wall and extending down to hardpan or rock.

Bid opening revealed that Tompkins had submitted the apparent low bid, while Blake's bid was second-low. Tompkins' bid was:

Base bid:	\$11,382,000
Alternate No. 1:	165,000
Alternate No. 2:	130,000
Alternate No. 3:	42,000
Total:	\$11,719,000

Blake's bid was:

Base bid:	\$11,573,000
Alternate No. 1:	96,000
Alternate No. 2:	103,000
Alternate No. 3:	56,000
Total:	\$11,828,000

GSA had budgeted \$11,428,000 for this project. Thus, with the exception of Tompkins' bid for the base work, all bids were more than the funds available at the time of bid opening. Therefore, GSA considered only Tompkins' bid to be eligible for award. Blake protested to GSA by letter of October 15, 1987, on the basis that Tompkins' bid was nonresponsive. On January 5, 1988, GSA denied Blake's protest and awarded a contract to Tompkins for the base work and alternate No. 2 only.

GSA decided to award a contract for the base work and alternate No. 2 as follows. First, GSA determined that alternate No. 1--caissons--was not necessary to support the building and, given the limited funds, the additional expense of alternate No. 1 was not justified. GSA also determined that alternate No. 3--landscaping--should not be purchased, because the planting could be accomplished under a separate contract, at a later time, if funds became available for that purpose. With regard to alternate No. 2--marble finish in lieu of gypsum board, venetian blinds, and carpet--GSA decided that it would be better to have the same contractor that had constructed the building complete these interior finish items, so as to avoid delays and damage and storage claims that are more likely to occur under multiple contracts. GSA requested the Department of State (the future occupant of the building) to fund \$84,000 of the cost of alternate No. 2; the Department of State agreed. Therefore, GSA awarded a contract to Tompkins in the amount of \$11,512,000 (\$11,382,000 for base work plus \$130,000 for alternate No. 2). On January 6, 1988, Blake filed its protest in our Office.

Blake contends that Tompkins' bid was nonresponsive because Tompkins did not set forth its unit price for caissons. As

stated above, the original place for a unit price entry was in the specifications, not on the bid form. Amendment No. 4 to the IFB provided a new bid form that contained blank spaces for the unit price (per linear foot) as well as for the total price for caissons, and directed bidders to provide unit prices for contract price adjustment purposes. While Tompkins did acknowledge amendment No. 4, Tompkins used the original bid form in submitting its bid. Therefore, Tompkins provided a total price for caissons but no unit price.

In our view, this did not make Tompkins' bid nonresponsive. In spite of Tompkins' failure to bid a unit price for caissons, Tompkins did bid a lump-sum price for that work and did acknowledge the amendment. We have held that even a bidder's failure to bid on an alternate item contained in an IFB does not render the bid nonresponsive where the contracting agency does not select that additive item as part of the contract awarded. Casson Construction Co., Inc., B-198746, Oct. 24, 1980, 80-2 CPD ¶ 318. Here, GSA decided not to include alternate No. 1 in the contract, because GSA believed spread footings were sufficient, and because there were not sufficient funds to purchase caissons. Thus, alternate No. 1 was not relevant to the responsiveness issue.

Blake also argues that Tompkins' bid was nonresponsive because Tompkins included the price for plant bed preparation as part of its bid for alternate No. 3 rather than as part of its bid for the base work as required by IFB amendment No. 4. Again, Blake's allegation has its genesis in the fact that Tompkins used the original bid form rather than the bid form provided with amendment No. 4.

The original bid form listed alternate No. 3 as "Provide site landscaping (plants only)" and included a blank space for the price for this work. The IFB elsewhere described alternate No. 3 as follows:

"Provide landscape planting in lieu of grass seeding. Work consists of materials as specified, but not necessarily limited to, the following sections of work

1. Section 02480 - Landscape Work"

One of the items of work required in section 02480 of the specifications was the preparation and improvement of planting beds. However, in IFB amendment No. 4, the line item description for alternate No. 3 was changed to the following:

"Provide site landscaping (plants and their installation only; plant bed preparation is included in the base bid)."

According to Blake, the effect of this wording change was to take the plant bed preparation work that originally was part of alternate No. 3 and make it part of the base work. Blake charges that, because Tompkins submitted its bid on the original bid form, Tompkins must have included plant bed preparation in its bid price for alternate No. 3 rather than as part of the price for base work as directed by IFB amendment No. 4. Thus, Blake concludes that Tompkins' bid is nonresponsive to the IFB.

GSA argues that plant bed preparation (basically, rototilling manure, fertilizer, peat moss and topsoil into the plant beds) was always considered a part of the base work rather than part of alternate No. 3. According to GSA, the only reason the description of alternate No. 3 was changed by amendment No. 4 was to make sure that bidders knew they were to deliver and install the plants rather than just deliver them to the site; amendment No. 4 also was to clarify that plant bed preparation was part of the base work. GSA also points out that Tompkins did acknowledge amendment No. 4 which expressly stated that "plant bed preparation is included in the base bid." Accordingly, GSA concludes that Tompkins properly had included the price of plant bed preparation as part of the base bid price and, therefore, the bid was responsive. Finally, GSA argues that, even if Tompkins' base bid did not include plant bed preparation, the contracting officer properly would have waived the defect as a minor informality in accord with the Federal Acquisition Regulation because the additional expense represented by plant bed preparation is only about \$600 more than the expense of spreading top soil and seeding that Tompkins would have included in its base bid if it did not include plant bed preparation. GSA points out that this is only approximately .005 percent of Tompkins' total bid price for the base work, and approximately .3 percent of the difference between Tompkins' and Blake's bid prices for the base work.

In our view, Tompkins gave an unqualified promise to do the work required under the IFB as amended. Tompkins acknowledged receipt of amendment No. 4, and while Tompkins used the original bid form, nowhere in its bid did Tompkins take any exception to the IFB requirements. Thus, Tompkins was bound to perform plant bed preparation as part of the base work, when GSA accepted Tompkins' bid and awarded it the

contract. See Hicklin GM Power Co., B-222538, Aug. 5, 1986,
86-2 CPD ¶ 153. Accordingly, Tompkins' bid was responsive.

The protest is denied.

for Ronald Berger
James F. Hinchman
General Counsel